

AN ACT

relating to a program for the recycling of computer equipment of consumers in this state; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter Y to read as follows:

SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM

Sec. 361.951. SHORT TITLE. This subchapter may be cited as the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.

Sec. 361.952. DEFINITIONS. In this subchapter:

(1) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(2) "Computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

(3) "Consumer" means an individual who uses computer equipment that is purchased primarily for personal or home business use.

(4) "Manufacturer" means a person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

1                    (ii) the person is or was licensed to use,  
2 other than under a license to manufacture computer equipment for  
3 delivery exclusively to or at the order of the licensor;

4                    (B) who sells or sold computer equipment  
5 manufactured by others under a brand that:

6                    (i) the person owns or owned; or

7                    (ii) the person is or was licensed to use,  
8 other than under a license to manufacture computer equipment for  
9 delivery exclusively to or at the order of the licensor;

10                   (C) who manufactures or manufactured computer  
11 equipment without affixing a brand;

12                   (D) who manufactures or manufactured computer  
13 equipment to which the person affixes or affixed a brand that:

14                   (i) the person does not or has not owned; or

15                   (ii) the person is not or was not licensed  
16 to use; or

17                   (E) who imports or imported computer equipment  
18 manufactured outside the United States into the United States  
19 unless at the time of importation the company or licensee that sells  
20 or sold the computer equipment to the importer has or had assets or  
21 a presence in the United States sufficient to be considered the  
22 manufacturer.

23                   (5) "Television" means any telecommunication system  
24 device that can broadcast or receive moving pictures and sound over  
25 a distance and includes a television tuner or a display device  
26 peripheral to a computer that contains a television tuner.

27                   Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE.

1 (a) Computers and related display devices are critical elements to  
2 the strength and growth of this state's economic prosperity and  
3 quality of life. Many of those products can be refurbished and  
4 reused, and many contain valuable components that can be recycled.

5 (b) The purpose of this subchapter is to establish a  
6 comprehensive, convenient, and environmentally sound program for  
7 the collection, recycling, and reuse of computer equipment that has  
8 reached the end of its useful life. The program is based on  
9 individual manufacturer responsibility and shared responsibility  
10 among consumers, retailers, and the government of this state.

11 Sec. 361.954. APPLICABILITY. (a) The collection,  
12 recycling, and reuse provisions of this subchapter apply to  
13 computer equipment used and returned to the manufacturer by a  
14 consumer in this state and do not impose any obligation on an owner  
15 or operator of a solid waste facility.

16 (b) This subchapter does not apply to:

17 (1) a television, any part of a motor vehicle, a  
18 personal digital assistant, or a telephone;

19 (2) a consumer's lease of computer equipment or a  
20 consumer's use of computer equipment under a lease agreement; or

21 (3) the sale or lease of computer equipment to an  
22 entity when the manufacturer and the entity enter into a contract  
23 that effectively addresses the collection, recycling, and reuse of  
24 computer equipment that has reached the end of its useful life.

25 Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before  
26 a manufacturer may offer computer equipment for sale in this state,  
27 the manufacturer must:

1           (1) adopt and implement a recovery plan; and

2           (2) affix a permanent, readily visible label to the  
3 computer equipment with the manufacturer's brand.

4           (b) The recovery plan must enable a consumer to recycle  
5 computer equipment without paying a separate fee at the time of  
6 recycling and must include provisions for:

7           (1) the manufacturer's collection from a consumer of  
8 any computer equipment that has reached the end of its useful life  
9 and is labeled with the manufacturer's brand; and

10           (2) recycling or reuse of computer equipment collected  
11 under Subdivision (1).

12           (c) The collection of computer equipment provided under the  
13 recovery plan must be:

14           (1) reasonably convenient and available to consumers  
15 in this state; and

16           (2) designed to meet the collection needs of consumers  
17 in this state.

18           (d) Examples of collection methods that alone or combined  
19 meet the convenience requirements of this section include:

20           (1) a system by which the manufacturer or the  
21 manufacturer's designee offers the consumer a system for returning  
22 computer equipment by mail;

23           (2) a system using a physical collection site that the  
24 manufacturer or the manufacturer's designee keeps open and staffed  
25 and to which the consumer may return computer equipment; and

26           (3) a system using a collection event held by the  
27 manufacturer or the manufacturer's designee at which the consumer

1 may return computer equipment.

2 (e) Collection services under this section may use existing  
3 collection and consolidation infrastructure for handling computer  
4 equipment and may include electronic recyclers and repair shops,  
5 recyclers of other commodities, reuse organizations,  
6 not-for-profit corporations, retailers, recyclers, and other  
7 suitable operations.

8 (f) The recovery plan must include information for the  
9 consumer on how and where to return the manufacturer's computer  
10 equipment. The manufacturer:

11 (1) shall include collection, recycling, and reuse  
12 information on the manufacturer's publicly available Internet  
13 site;

14 (2) shall provide collection, recycling, and reuse  
15 information to the commission; and

16 (3) may include collection, recycling, and reuse  
17 information in the packaging for or in other materials that  
18 accompany the manufacturer's computer equipment when the equipment  
19 is sold.

20 (g) Information about collection, recycling, and reuse on a  
21 manufacturer's publicly available Internet site does not  
22 constitute a determination by the commission that the  
23 manufacturer's recovery plan or actual practices are in compliance  
24 with this subchapter or other law.

25 (h) Each manufacturer shall submit a report to the  
26 commission not later than January 31 of each year that includes:

27 (1) the weight of computer equipment collected,

1 recycled, and reused during the preceding calendar year; and

2 (2) documentation verifying the collection,  
3 recycling, and reuse of that computer equipment in a manner that  
4 complies with Section 361.964 regarding sound environmental  
5 management.

6 (i) If more than one person is a manufacturer of a certain  
7 brand of computer equipment as defined by Section 361.952, any of  
8 those persons may assume responsibility for and satisfy the  
9 obligations of a manufacturer under this subchapter for that brand.  
10 If none of those persons assumes responsibility or satisfies the  
11 obligations of a manufacturer for the computer equipment of that  
12 brand, the commission may consider any of those persons to be the  
13 responsible manufacturer for purposes of this subchapter.

14 (j) The obligations under this subchapter of a manufacturer  
15 who manufactures or manufactured computer equipment, or sells or  
16 sold computer equipment manufactured by others, under a brand that  
17 was previously used by a different person in the manufacture of the  
18 computer equipment extends to all computer equipment bearing that  
19 brand regardless of its date of manufacture.

20 Sec. 361.956. RETAILER RESPONSIBILITY. (a) A person who  
21 is a retailer of computer equipment may not sell or offer to sell  
22 new computer equipment in this state unless the equipment is  
23 labeled with the manufacturer's label and the manufacturer is  
24 included on the commission's list of manufacturers that have  
25 recovery plans.

26 (b) Retailers can go to the commission's Internet site as  
27 outlined in Section 361.958 and view all manufacturers that are

1 listed as having registered a compliant collection program.  
2 Covered electronic products from manufacturers on that list may be  
3 sold in or into the State of Texas.

4 (c) A retailer is not required to collect computer equipment  
5 for recycling or reuse under this subchapter.

6 Sec. 361.957. LIABILITY. (a) A manufacturer or retailer  
7 of computer equipment is not liable in any way for information in  
8 any form that a consumer leaves on computer equipment that is  
9 collected, recycled, or reused under this subchapter.

10 (b) This subchapter does not exempt a person from liability  
11 under other law.

12 Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.

13 (a) The commission shall educate consumers regarding the  
14 collection, recycling, and reuse of computer equipment.

15 (b) The commission shall host or designate another person to  
16 host an Internet site providing consumers with information about  
17 the recycling and reuse of computer equipment, including best  
18 management practices and information about and links to information  
19 on:

20 (1) manufacturers' collection, recycling, and reuse  
21 programs, including manufacturers' recovery plans; and

22 (2) computer equipment collection events, collection  
23 sites, and community computer equipment recycling and reuse  
24 programs.

25 Sec. 361.959. ENFORCEMENT. (a) The commission may conduct  
26 audits and inspections to determine compliance with this  
27 subchapter.

1       (b) The commission and the attorney general, as  
2 appropriate, shall enforce this subchapter and, except as provided  
3 by Subsections (d) and (e), take enforcement action against any  
4 manufacturer, retailer, or person who recycles or reuses computer  
5 equipment for failure to comply with this subchapter.

6       (c) The attorney general may file suit under Section 7.032,  
7 Water Code, to enjoin an activity related to the sale of computer  
8 equipment in violation of this subchapter.

9       (d) The commission shall issue a warning notice to a person  
10 on the person's first violation of this subchapter. The person must  
11 comply with this subchapter not later than the 60th day after the  
12 date the warning notice is issued.

13       (e) A retailer who receives a warning notice from the  
14 commission that the retailer's inventory violates this subchapter  
15 because it includes computer equipment from a manufacturer that has  
16 not submitted the recovery plan required by Section 361.955 must  
17 bring the inventory into compliance with this subchapter not later  
18 than the 60th day after the date the warning notice is issued.

19       Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION.  
20 Financial or proprietary information submitted to the commission  
21 under this subchapter is exempt from public disclosure under  
22 Chapter 552, Government Code.

23       Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission  
24 shall compile information from manufacturers and issue an  
25 electronic report to the committee in each house of the legislature  
26 having primary jurisdiction over environmental matters not later  
27 than March 1 of each year.



1       Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does  
2 not authorize the commission to impose a fee, including a recycling  
3 fee or registration fee, on a consumer, manufacturer, retailer, or  
4 person who recycles or reuses computer equipment.

5       Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer  
6 is responsible for any information in any form left on the  
7 consumer's computer equipment that is collected, recycled, or  
8 reused.

9       (b) A consumer is encouraged to learn about recommended  
10 methods for recycling and reuse of computer equipment that has  
11 reached the end of its useful life by visiting the commission's and  
12 manufacturers' Internet sites.

13       Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All  
14 computer equipment collected under this subchapter must be recycled  
15 or reused in a manner that complies with federal, state, and local  
16 law.

17       (b) The commission shall adopt as standards for recycling or  
18 reuse of computer equipment in this state the standards provided by  
19 "Electronics Recycling Operating Practices" as approved by the  
20 board of directors of the Institute of Scrap Recycling Industries,  
21 Inc., April 25, 2006, or other standards from a comparable  
22 nationally recognized organization.

23       Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this  
24 section, "state agency" has the meaning assigned by Section  
25 2052.101, Government Code.

26       (b) A person who submits a bid for a contract with a state  
27 agency for the purchase or lease of computer equipment must be in

1 compliance with this subchapter.

2 (c) A state agency that purchases or leases computer  
3 equipment shall require each prospective bidder to certify the  
4 bidder's compliance with this subchapter. Failure to provide that  
5 certification renders the prospective bidder ineligible to  
6 participate in the bidding.

7 (d) In considering bids for a contract for computer  
8 equipment, in addition to any other preferences provided under  
9 other laws of this state, the state shall give special preference to  
10 a manufacturer that has a program to recycle the computer equipment  
11 of other manufacturers, including collection events and  
12 manufacturer initiatives to accept computer equipment labeled with  
13 another manufacturer's brand.

14 (e) The Texas Building and Procurement Commission and the  
15 Department of Information Resources shall adopt rules to implement  
16 this section.

17 Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If  
18 federal law establishes a national program for the collection and  
19 recycling of computer equipment and the commission determines that  
20 the federal law substantially meets the purposes of this  
21 subchapter, the commission may adopt an agency statement that  
22 interprets the federal law as preemptive of this subchapter.

23 (b) This subchapter expires on the date the commission  
24 issues a statement under this section.

25 SECTION 2. Section 7.052, Water Code, is amended by adding  
26 Subsections (b-1) and (b-2) to read as follows:

27 (b-1) The amount of the penalty assessed against a

1 manufacturer that does not label its computer equipment or adopt  
2 and implement a recovery plan as required by Section 361.955,  
3 Health and Safety Code, may not exceed \$10,000 for the second  
4 violation or \$25,000 for each subsequent violation. A penalty  
5 under this subsection is in addition to any other penalty that may  
6 be assessed for a violation of Subchapter Y, Chapter 361, Health and  
7 Safety Code.

8 (b-2) Except as provided by Subsection (b-1), the amount of  
9 the penalty for a violation of Subchapter Y, Chapter 361, Health and  
10 Safety Code, may not exceed \$1,000 for the second violation or  
11 \$2,000 for each subsequent violation. A penalty under this  
12 subsection is in addition to any other penalty that may be assessed  
13 for a violation of Subchapter Y, Chapter 361, Health and Safety  
14 Code.

15 SECTION 3. Section 7.069, Water Code, is amended to read as  
16 follows:

17 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as  
18 provided by Subsection (b), a [A] penalty collected under this  
19 subchapter shall be deposited to the credit of the general revenue  
20 fund.

21 (b) A penalty collected under Section 7.052(b-1) or (b-2)  
22 shall be paid to the commission and deposited to the credit of the  
23 waste management account.

24 SECTION 4. (a) The Texas Commission on Environmental  
25 Quality shall adopt any rules required to implement this Act not  
26 later than May 1, 2008.

27 (b) This Act may not be enforced before September 1, 2008.

1           (c) The reports required under Sections 361.955 and  
2 361.961, Health and Safety Code, as added by this Act, are not  
3 required to be prepared or submitted for the first time before the  
4 dates specified by those sections in 2010.

5           (d) Notwithstanding the 60-day limit under Section  
6 361.959(d) or (e), Health and Safety Code, as added by this Act, a  
7 retailer may sell any inventory accrued before the effective date  
8 of this Act without incurring a penalty.

9           SECTION 5. This Act takes effect September 1, 2007.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2714 was passed by the House on May 2, 2007, by the following vote: Yeas 147, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2714 on May 25, 2007, by the following vote: Yeas 137, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2714 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor